

TO: APPROPRIATIONS COMMITTEE

FROM: CHRO's OFFICE OF PUBLIC HEARINGS

DATE: FEBRUARY 23, 2011

SUBJECT: BUDGET PROPOSAL RESTRUCTURING GOVERNMENT

The Office of Public Hearings is composed of five human rights referees and their staff. The human rights referees are appointed by the Governor and confirmed by both houses of the General Assembly for statutory terms of office.

The cases the referees administer - both CHRO and whistleblower retaliation - get hands-on attention by the assigned presiding referee from their receipt through final disposition. The assigned referee takes control of the docket, schedules all necessary proceedings, sets the parameters of discovery and makes rulings on the scope thereof. Jurisdictional dispositive motions are often filed on issues as erudite as the first amendment or as practical as res judicata, and can result in legal rulings of thirty pages or more. Pre-hearing conferences (often protracted) identify the witnesses and exhibits for the public hearing to come, and the hearing itself is virtually indistinguishable from a courtside trial (state or federal).

Parallel to the duties of the presiding referee are the duties of the designated settlement referee assigned to settlement efforts. Settlement efforts commence shortly after certification and sometimes continue throughout the life of the case, resulting in the ultimate settlement of a vast majority of the cases certified to public hearing. Settlements save time and money (a majority of the lawyers who appear before us are Connecticut state employees) and being successful in this endeavor is a high priority for us all.

For fiscal year 2009-2010, the referees conducted 209 conferences, four hearings in damages and seven public hearings (trials) over 54 trial days. We also ruled on 467 procedural and substantive motions. We resolved a total of 66 certified discrimination cases and 27 whistleblower retaliation cases, principally through the aforementioned settlement endeavors and dispositive memoranda of dismissal. In discrimination settlements alone over \$500,000.00 was obtained for claimants in fiscal 2009-2010, and this number does not include the many settlements the terms of which are protected by confidentiality agreements.

In the fiscal year 2009-2010, the superior court issued ten decisions on appeals from the referees' decisions. The quality of the referees' legal analyses is confirmed by the fact that the court dismissed all ten appeals.

The referees are currently completing one year terms-an anomaly necessitated by a statutory reduction in number from five to three effective July 1, 2011. During confirmation proceedings last year Co-Chair Claire Janowski of the executive and legislative nominations committee queried whether three referees would be adequate to handle the workload and opined that she had a feeling some modifications might need to be made. With all due respect, that is why I am here on behalf of my office. There is no question that EEOC filings are up as unemployment remains high so that our human rights docket is expected to expand, and our extensive whistleblower retaliation responsibilities are being targeted for expansion by a number of legislative initiatives. If the number were to be reduced to three, the necessary appointment of settlement referees would reduce to just two the number available to preside in any given matter, increasing dockets and substantially lengthening the process. As a result of natural attrition, only four referees will be seeking reappointment in July, a number which we believe is the minimum required to provide the high level of service the commission, the public and the bar have come to expect. It should be noted that a reduction in force to four (as opposed to three) referees would still represent a twenty percent reduction from the current level and a forty three percent reduction from the seven referees authorized as recently as 2009. Even if our request for a modification of the scheduled reduction is effectuated, we believe our little office will have sustained reductions unlike almost any experienced anywhere else in state government.

We would appreciate any consideration you can afford and would be happy to appear further before you and provide any further information we can to assist in the difficult decisions entrusted to you.

Prepared by J. Allen Kerr Jr., Chief Human Rights Referee and Thomas C. Austin,
Human Rights Referee

Presented by Thomas C. Austin, Human Rights Referee